

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND P. BIELATA,)	
Plaintiff)	
)	Civil Action No. 05-183 ERIE
v.)	
)	
CRIME VICTIM CENTER OF ERIE COUNTY,)	
INC. and SUSANNE POROWSKI,)	
Defendants)	

**MOTION TO DISMISS AND/OR PARTIALLY DISMISS
COUNTS I, II, IV, V AND VI OF COMPLAINT**

Defendants CRIME VICTIM CENTER OF ERIE COUNTY, INC. and SUSANNE POROWSKI, by and through their attorneys, MacDonald Illig Jones & Britton LLP, file the following Motion to Dismiss and/or Partially Dismiss Counts I, II, IV, V and VI of Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure:

1. This civil action involves the following claims by plaintiff Raymond P. Bielata (hereinafter "Bielata") against defendants Crime Victim Center of Erie County, Inc. (hereinafter "Crime Victim Center") and Susanne Porowski (hereinafter "Porowski") arising out of Bielata's employment with the Crime Victim Center and the termination of that employment on June 17, 2003 as a result of poor work performance:

- (1) Count I, in which Bielata alleges age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C.A. § 621 *et seq.* (hereinafter "ADEA");

- (2) Count II, in which Bielata alleges disability discrimination and retaliation in violation of the Americans with Disabilities Act, 42 U.S.C.A. § 12101, *et seq.* (hereinafter "ADA");
- (3) Count III, in which Bielata alleges age and disability discrimination and retaliation in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.* (hereinafter "PHRA");
- (4) Count IV, in which Bielata alleges age and disability discrimination and retaliation in violation of the Erie County Human Relations Ordinance (hereinafter "ECHRO");
- (5) Count V, in which Bielata alleges discharge and retaliation in violation of the Family Medical Leave Act, 29 U.S.C.A. § 2601, *et seq.* (hereinafter "FMLA"); and,
- (6) Count VI, in which Bielata alleges a cause of action for promissory estoppel with regard to Bielata's FMLA claim.

(Complaint, ¶¶ 7-65).

2. Defendants Crime Victim Center and Porowski seek partial dismissal of plaintiff Bielata's claims under the ADEA, the complete dismissal of Bielata's claims under the ECHRO and FMLA, and the complete dismissal of Bielata's claim for promissory estoppel. In addition, defendants Crime Victim Center and Porowski seek the dismissal of Porowski as a defendant with respect to Bielata's claims under the ADA, ADEA and ECHRO. The Crime Victim Center and Porowski support this Motion to Dismiss with the following, all of which are incorporated herein by reference:

- (1) Affidavit of Susanne Porowski;

- (2) Brief in Support of Motion to Dismiss and/or Partially Dismiss Counts I, II, IV, V and VI of Complaint; and,
- (3) Proposed Order.

3. Defendants Crime Victim Center and Porowski are entitled to the dismissal and/or partial dismissal of the following claims:

- (1) Bielata's claims under the ADEA for emotional distress and punitive damages, set forth in Count I of the Complaint, because such damages are not permitted under the ADEA;
- (2) Bielata's claims under the ECHRO, set forth in Count IV of the Complaint, because the ECHRO does not provide for a private, independent cause of action;
- (3) Bielata's claims under the FMLA, set forth in Count V of the Complaint, because the FMLA is inapplicable to the defendants;
- (4) Bielata's claim for promissory estoppel, set forth in Count VI of the Complaint, because Bielata has failed to state a promissory estoppel claim upon which relief may be granted; and,
- (5) Bielata's claims against defendant Porowski under the ADEA, ADA and ECHRO, set forth in Counts I, II and IV of the Complaint, because the ADEA, ADA and ECHRO do not recognize private actions against individuals.

WHEREFORE, defendants Crime Victim Center of Erie County, Inc. and Susanne Porowski request this Honorable Court to: (1) dismiss plaintiff Bielata's claims for emotional distress and punitive damages under the ADEA, as set forth in Count I of the Complaint; (2) dismiss plaintiff Bielata's claims under the ECHRO, as set forth in Count IV of the Complaint; (3) dismiss plaintiff Bielata's claims under the FMLA, as set forth in Count V of the Complaint; (4) dismiss plaintiff Bielata's claim for promissory estoppel, as set forth in Count VI of the Complaint; and, (5) dismiss plaintiff Bielata's claims under the ADA, ADEA and ECRHO against Susanne Porowski in her individual capacity, as set forth in Counts I, II and IV of the Complaint.

Respectfully submitted,

/s/ Lisa Smith Presta

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Attorneys for Defendants,

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Susanne Porowski

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss and/or Partially Dismiss Counts I, II, IV, V and VI of Complaint was served upon the following counsel for plaintiff Raymond P. Bielata, via First-Class United States Mail, this 7th day of October, 2005:

Jeffrey J. Cole, Esq.
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/s/ Lisa Smith Presta

Lisa Smith Presta